

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOSEPH PADGETT, et al.,
Plaintiffs,

v.

BRIAN LOVENTHAL, et al.,
Defendants.

Case No. [5:04-cv-03946-EJD](#)

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION**

Re: Dkt. No. 1206

Plaintiff requests leave to file a motion for reconsideration for this Court's October 7, 2019 Order, where the Court granted an award of attorney fees and costs directly to the law firms of Kallis & Associates and Bustamante & Gagliasso. Order Granting Award of Fees and Costs ("Order"), Dkt. 1201. He argues this Court failed to consider "material facts or dispositive legal arguments which were presented to the Court before such interlocutory order." N.D. Cal. Civ. L.R. 7-9(b)(3). Plaintiff grounds his argument in this Court's "failure" to properly understand California issue preclusion and contract invalidity law. Motion for Leave to File Motion for Reconsideration ("Mot.") at 3-5, Dkt. 1206. Plaintiff feels this Court has "travel[ed] to the Land of Make Believe" in its findings. Mot. at 4; *see also* Fed. R. Civ. P. 11(c)(3) (allowing the court, on its own initiative, to order a party to explain why it has not violated this Rule by presenting arguments unsupported by existing law).

First, to the extent issue or claim preclusion even applies, it is irrelevant to this proceeding. As this Court explained in its Order, when fees were granted in 2015, there was a valid contractual provision justifying the award of fees to counsel, rather than to Plaintiff. Order at 6. To the extent Plaintiff misunderstands this Court's analysis, the essential point can be summed up to this—in

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2015, when this Court first awarded fees, a **valid** contractual provision (see below for why the provision was valid) existed, meaning the fees should have *always* gone directly to the Law Firms. *See id.* at 6 n.4. Accordingly, res judicata is irrelevant to this proceeding as *no* action was initiated in state court at this time.

Second, pursuant to basic contractual principles, which the Court urges counsel to familiarize himself with, a “voidable” contract is operative until it is voided “at the option of the impaired party.” CLAUDE D. ROHWER, *CONTRACTS IN A NUTSHELL*, at § 5.2 (8th ed. 2017). In contrast, a “void” contract, never has any legal effect—it is as if no contract ever existed. *Id.* § 5.9. Here, as the Court discussed in its opinion, the contract, pursuant to established California law, was “voidable.” Order at 5. Thus, until Plaintiff voided the contract in 2017, it was operative. Because 2015 was two years before 2017, the contract was operative when this Court issued its first order.

Accordingly, because the Court did not fail to consider material facts or dispositive legal arguments, Plaintiff’s motion for reconsideration is **DENIED**.

IT IS SO ORDERED.

Dated: October 24, 2019


EDWARD J. DAVILA
United States District Judge